

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE WEATHERHEAD COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1716

Decision No. CU 3654

Counsel for claimant:

Reavis, Pogue, Neal & Rose
By William V. Kane, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THE WEATHERHEAD COMPANY in the amount of \$296,541.42, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in the State of Ohio and that at all times between January 1, 1957 and presentation of this claim on April 19, 1967, all of the outstanding capital stock was owned by United States nationals. The Commission therefore holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's invoices reflecting the sale of goods to various consignees in Cuba, and charges for freight, shipping and other attendant fees, as follows:

<u>Consignee</u>	<u>Due Date of Unpaid Draft or Invoice</u>	<u>Date of Payment or Acknowledgment</u>	<u>Amount</u>
Compania Gas Liquido, S.A.:	June 29, 1958		\$ 394.28
	Aug. 14, 1958		1,070.81
	Aug. 31, 1958		2,741.73
	Oct. 19, 1958		270.41
	Dec. 13, 1958		465.98
Compania Petrolera Shell de Cuba, S.A.:	Jan. 5, 1959		1,655.00
	Aug. 7, 1959		70,720.00
	Aug. 22, 1959		70,720.00
	Aug. 31, 1959		145.00
	Sept. 11, 1959		145.00
		Nov. 16, 1959	35,210.57
		Mar. 15, 1960	2,014.84
J. Sanchez y Cia.:		Mar. 19, 1959	2,063.12
		May 27, 1959	1,162.22
		Sept. 29, 1959	675.00
		Oct. 1, 1959	556.88
		Nov. 3, 1959	605.34
	Dec. 1, 1959		675.00

<u>Consignee</u>	<u>Due Date of Unpaid Draft or Invoice</u>	<u>Date of Payment or Acknowledgment</u>	<u>Amount</u>
J. Sanchez y Cia.:		Dec. 18, 1959	\$ 368.00
		Jan. 5, 1960	556.88
		Feb. 8, 1960	605.34
		Mar. 25, 1960	368.00
		Apr. 11, 1960	556.88
		May 13, 1960	605.34
		May 25, 1960	3,135.15
		June 29, 1960	368.00
	July 1, 1960		1,113.76
	Aug. 1, 1960		1,210.68
	Sept. 22, 1960		368.00
	Nov. 1, 1960		605.34
		Dec. 15, 1960	368.00
		Aug. 2, 1961	368.00
Cia. Operadora de Gas, S.A.:		Sept. 11, 1959	505.66
		Dec. 18, 1959	505.66
S. Linares S. en C.		Oct. 8, 1959	876.49
Distribuidora Felix Dominquez, S.A.:		Oct. 30, 1959	518.40
		Jan. 6, 1960	388.80
		Feb. 15, 1960	388.80
		May 16, 1960	388.80
		Aug. 18, 1960	388.80
A. Solares y Cia. S. en C.:		Nov. 20, 1959	2,165.09
		Jan. 28, 1960	39,644.54
		Mar. 29, 1960	14,993.62
General Gas Cia. Emb. de Gas Liquid		Nov. 27, 1959	1,089.00
Industrios Mi Gas, S.A.		Dec. 28, 1959	480.13
Cia. Commercial la Revoltosa, S.A.		Feb. 16, 1960	5,400.00
Bernardo Vega		Mar. 23, 1960	1,512.67
Importaciones Petro-Gas, S.A.:		Mar. 29, 1960	5,239.00
		Apr. 12, 1960	12,361.00
		May 30, 1960	41.75
Aspuru & Cia.:		Apr. 8, 1960	1,725.00
		Dec. 17, 1959	1,230.00
Compania Distribuidora Super-Gas, S.A.	May 13, 1960		4,304.00
Marquez y Cia.		May 18, 1960	<u>505.66</u>
			\$296,541.42

Claimant states it has not received these funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the subject sums due were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporation.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644); and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
March 20, 1959	\$ 2,063.12
May 28, 1959	1,162.22
September 12, 1959	505.66
September 29, 1959	149,003.21
October 2, 1959	556.88
October 9, 1959	876.49
October 31, 1959	518.40
November 4, 1959	605.34
November 17, 1959	35,210.57
November 21, 1959	2,165.09
November 28, 1959	1,089.00
December 1, 1959	675.00
December 18, 1959	1,230.00
December 19, 1959	873.66
December 29, 1959	480.13
January 6, 1960	556.88
January 7, 1960	388.80
January 28, 1960	39,644.54
February 9, 1960	605.34
February 16, 1960	388.80
February 17, 1960	5,400.00
March 16, 1960	2,014.84
March 24, 1960	1,512.67
March 26, 1960	368.00
March 29, 1960	20,232.62
April 9, 1960	1,725.00
April 12, 1960	556.88
April 13, 1960	12,361.00
May 13, 1960	4,304.00
May 14, 1960	605.34
May 17, 1960	388.80
May 19, 1960	505.66
May 26, 1960	3,135.15
May 31, 1960	41.75
June 30, 1960	368.00
July 1, 1960	1,113.76
August 1, 1960	1,210.68
August 18, 1960	388.80
September 22, 1960	368.00
November 1, 1960	605.34
December 16, 1960	368.00
August 3, 1961	<u>368.00</u>
	\$296,541.42

CERTIFICATION OF LOSS

The Commission certifies that THE WEATHERHEAD COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Ninety-six Thousand Five Hundred Forty-one Dollars and Forty-two Cents (\$296,541.42) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAY 21 1969

Leonard v. B. Sutton
~~Leonard v. B. Sutton, Chairman~~

Therese Jaffe
~~Therese Jaffe, Commissioner~~

Sidney J. Leach
~~Sidney J. Leach, Commissioner~~

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)